

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSEPH SANDERS,	§
	§
Defendant Below-	§ No. 588, 2010
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID Nos. 0710031667
	§ and 0711022431
Plaintiff Below-	§
Appellee.	§

Submitted: June 9, 2011

Decided: August 15, 2011

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

**ORDER**

This 15<sup>th</sup> day of August 2011, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The defendant-appellant, Joseph Sanders, filed this appeal from an order of the Superior Court dated August 26, 2010, which modified an earlier order sentencing Sanders on his third violation of probation (VOP). Sanders contends that the modified sentence is illegal. We find no merit to his appeal. Accordingly, the judgment of the Superior Court is affirmed.

(2) The record reflects that Sanders pled guilty in July 2008 to receiving stolen property, two counts of theft, and forgery. In August 2008, the Superior Court sentenced Sanders as a habitual offender, effective October 28, 2007, to a

total period of three years and nine months at Level V incarceration, to be suspended after serving nine months for one year at Level III probation. Sanders was found in violation of his probation in January 2010 and again in April 2010. Both of those VOP sentences imposed a total of three years at Level V incarceration, suspended entirely for lesser supervision. Thus, when Sanders violated his probation for the third time and the Superior Court sentenced him in July 2010, the Superior Court had authority to impose up to three years at Level V incarceration.<sup>1</sup> The Superior Court, however, did not impose the full three years at Level V. Instead, the Superior Court, on July 20, 2010, sentenced Sanders on the forgery charge to serve six months at Level V to be followed by six months at boot camp. On the theft charges, the Superior Court imposed a total of two years at Level V incarceration but suspended the sentence entirely for Level III probation.

(3) Thereafter, the sentencing judge was notified that Sanders was not eligible for boot camp. Accordingly, the Superior Court held a sentence modification hearing on August 26, 2010. Both Sanders and his counsel were present at the hearing. Thereafter, the Superior Court imposed a modified order, which sentenced Sanders on his third VOP as follows: for forgery, six months at Level V incarceration with no probation to follow; for the first theft count, one

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<sup>1</sup> *Pavulak v. State*, 880 A.2d 1044, 1045-46 (Del. 2005) (holding that, upon finding a subsequent VOP, the Superior Court has authority to reimpose any suspended Level V time from the prior VOP sentence).

year and five days<sup>2</sup> at Level V incarceration, to be suspended after serving one year at Level V; and for the second theft count, discharged. Thus, as the Superior Court stated at the conclusion of the modification hearing, the modified sentence required Sanders to spend eighteen months at Level V incarceration with no probation to follow.

(4) After careful consideration of the parties' contentions on appeal, we find no merit to Sanders' argument that the modified sentence is illegal. The Superior Court, upon finding Sanders guilty of his third VOP, could have imposed up to three years at Level V. The Superior Court's modified sentencing order did not exceed the authorized sentence<sup>3</sup> and was imposed after giving Sanders notice and an opportunity to be heard.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice

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<sup>2</sup> The extra five days added to this sentence appears to be a clerical error, but has no impact on the overall length of Sanders' sentence.

<sup>3</sup> *Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999).